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10/658,670	09/09/2003	Nancy Tulgren	3135.02US01	2183

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EXAMINER

VALENTI, ANDREA M

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 10/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/658,670

Applicant(s)

TULGREN ET AL.

Examiner

Andrea M. Valenti

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 11 August 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-11, 13, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,577,465 to Cook in view of U.S. Patent No. 5,743,412 to Noble.

Regarding Claim 1, Cook teaches modular pet furniture comprising: a frame structure comprising a plurality of vertical support members (#12), each support member having an insertion end, a plurality of horizontal (Fig. 1 #12) cross members, each of the horizontal support members having an insertion end, and a plurality of joint members (Fig. 3-5) for interconnecting the vertical support members and the horizontal support members to form an array; and a pet support structure (#44 and 52) comprising a pet support surface and an attachment mechanism operably attached thereto, wherein the attachment mechanism is removably attached to at least one of the vertical support members or the horizontal support members for maintaining the pet support surface in a position with respect to the frame structure.

Cook teaches that the insertion ends of the horizontal and vertical supports receive a prong from the joint (Cook Fig. 5). Cook is silent on the insertion ends of the horizontal and vertical supports being received within the joint members. However,

Art Unit: 3643

Noble teaches an modular assembly means which connects the horizontal and vertical supports by inserting the ends of the supports into the joint member (Noble Fig. 1 #50 and Fig. 3 #30). Essentially this merely teaches the reversing of known parts, i.e. instead of the joint being placed in the supports the supports are inserted into the joints. It would have been obvious to one of ordinary skill in the art to modify the teachings of Cook with the teachings of Noble at the time of the invention since the modification is merely the selection of a known alternate equivalent modular assembly means selected for the adjustability taught by Noble (Noble Col. 1 line 53-67).

Regarding Claim 2, Cook as modified teaches the attachment mechanism comprises: a support frame having an outer perimeter, wherein the pet support surface is operably attached to the support frame; and a plurality of support legs (Fig.1 #12 parallel to #52) extending from the support frame.

Regarding Claim 3, Cook as modified teaches at least one of the horizontal support members has an non-terminal aperture formed therein and wherein the aperture receives one of the support legs (Fig. 2 #18 inherently receives the support leg via #36).

Regarding Claim 4, Cook as modified teaches the pet support surface is removably attached to the attachment means (Fig. 2).

Regarding Claim 5, Cook as modified teaches a pet enclosure (#52) mounted with respect to the pet support surface to at least partially enclose the pet support surface.

Regarding Claim 6, Cook as modified teaches the pet support surface is fabricated from fabricate or plastic (#52).

Regarding Claim 8, Cook as modified teaches the vertical support members, horizontal cross members, and the joint members are fabricated from plastic, wood, metal, or combinations thereof (Col. 2 line 41 and Fig. 2 #12).

Regarding Claim 9, Cook as modified teaches the attachment mechanism allows the pet support structure to be selectively positioned with respect to the frame structure (Fig. 1-5).

Regarding Claim 10, Cook as modified teaches a pet furniture frame structure comprising; a plurality of vertical support members (Fig. 1 #12); a plurality of horizontal support members (Fig. 1 #12); a plurality of joint members (Fig. 3-5) interconnecting the vertical support members and the horizontal support members to form an array of support regions; and a plurality of pet support surfaces (#44 and 52) removably attached in the support regions.

Regarding Claim 11, Cook as modified teaches a bed structure is removably mounted in the support region (Fig. 2 #52).

Regarding Claim 13, Cook as modified teaches a method of forming modular pet furniture comprising: interconnecting a plurality of horizontal support members and a plurality of vertical support members (Fig.1 #12) using a plurality of joint members (Fig. 3-5), thereby forming a frame; attaching a bed (#44 and 52) structure to at least one horizontal support member; and fastening a pet support to the bed structure.

Art Unit: 3643

Regarding Claim 15, Cook as modified teaches attaching a platform to the top of the modular pet bed frame (#16).

Regarding Claim 7, Cook as modified teaches a press fit, wherein the vertical support members and the horizontal cross members are secured to the joint members with solvent cement, twist lock connectors, or set-screw fittings (Noble Col. 1 line 65).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 12 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,577,465 to Cook in view of U.S. Patent No. 5,709,164 to Batterton.

Regarding Claims 12 and 14, Cook is silent on a scratch pad is removably mounted in the support region or attaching a fabric to at least one horizontal cross member to form a scratch pad. However, Batterton teaches a modular pet furniture with an attachment of a fabric to function as a scratch pad (Batterton Col. 1 line 45). It would have been obvious to one of ordinary skill in the art to modify the teachings of Cook with the teachings of Batterton at the time of the invention to encourage the cat to scratch the play surface in order to discourage scratching on human furniture as taught by Batterton (Batterton abstract).

***Response to Arguments***

Applicant's arguments with respect to claims 1-15 have been considered but are moot in view of the new ground(s) of rejection.

Examiner maintains that Cook teaches that the vertical and horizontal support members do have "insertion ends" since this term is not clearly defined initially as to whether the support member insertions ends are the points where they receive an insertion or the portion of the member that is inserted into another object. This is later defined in the last sentence of the claim; however this modification is an obvious design choice for one of ordinary skill in the art for the reasons presented in the above paragraphs.

The presentation of the limitations in claim 3 are broad in nature and do not precisely distinguish what applicant is intending to claim. Examiner maintains the position that Cook Fig. 2 teaches that one horizontal member (i.e. #20) has a non-terminal aperture (i.e. #18) that receives a support leg (i.e. #36 and 41).

The means for securing the joint members with the support members is an engineering design choice involving the selection of a old and notoriously well-known alternate equivalent fastening means performing the same intended function selected merely to met certain ergonomic needs of the end user. Page 4 line 5-7 indicates that many other similar means of attachment can be selected merely depending on the desire permanency of the connection. The examiner has cited U.S. Patent No. 6,585,221 to Gretz to further illustrate that solvent cement is a well-known means of joining two modular members together (Gretz Col. 4 line 66-67 and Col. 5 line 1-9).

Art Unit: 3643

Both Cook and Batterton teach cat climbing devices. Both of these climbing devices consist of a vertical support leg and a horizontal platform surface. Examiner maintains that there is sufficient motivation provided within the teachings of the cited references to motivate one of ordinary skill in the art to modify the teachings of Cook. Batterton teaches the accepted wisdom in the field of animal husbandry that by covering the climbing device in a scratch post fabric discourages the cat from scratching on other furniture in the house (Batterton Abstract). Thus, one of ordinary skill in the art is provided with sufficient motivation to cover the device of Cook with the fabric taught by Batterton for the known advantage of preventing damage to other household furniture.

Examiner maintains that applicant has not patentably distinguished over the teachings of the cited prior art.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: U.S. Patent No. 6,585,221.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the



Art Unit: 3643


shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

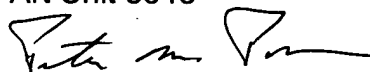
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 703-305-3010. The examiner can normally be reached on 7:30am-5pm M-F; Alternating Fridays Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703-308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

21 October 2004

  
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Patent Examiner  
Art Unit 3643

  
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10/22/04